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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2009 - 43

12 **DEBRA ANN KITTLE**

ACCUSATION

13 187 Summerside Circle
14 Danville, CA 94526

15 Registered Nurse License No. 238382,

Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. On or about November 30, 1973, the Board of Registered Nursing
23 ("Board") issued Registered Nurse License Number 238382 to Debra Ann Kittle ("Respondent").
24 The license will expire on April 30, 2009, unless renewed.

25 **JURISDICTION**

26 3. Section 2750 of the Business and Professions Code ("Code") provides:

27 "Every certificate holder or licensee, including licensees
28 holding temporary licenses, or licensees holding licenses placed
in an inactive status, may be disciplined as provided in this article

1 [Article 3 of the Nursing Practice Act (Bus. & Prof Code,
2 § 2700 et seq.)). As used in this article, 'license' includes
3 certificate, registration, or any other authorization to engage
4 in practice regulated by this chapter. The proceedings under
5 this article shall be conducted in accordance with Chapter 5
(commencing with Section 11500) of Part 1 of Division 3 of
6 Title 2 of the Government Code [the Administrative Procedure
7 Act], and the board shall have all the powers granted therein."

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12 4. Code section 2764 provides:

13 "The lapsing or suspension of a license by operation of
14 law or by order or decision of the board or a court of law, or the
15 voluntary surrender of a license by a licensee shall not deprive
16 the board of jurisdiction to proceed with any investigation of or
17 action or disciplinary proceeding against such license, or to
18 render a decision suspending or revoking such license."

19 STATUTORY PROVISIONS

20 5. Code section 2761 provides, in pertinent part:

21 "The board may take disciplinary action against a
22 certified or licensed nurse or deny an application for a certificate
23 or license for any of the following:

24 (a) Unprofessional conduct"

25 6. Code section 2762 provides, in pertinent part:

26 "In addition to other acts constituting unprofessional
27 conduct within the meaning of this chapter [the Nursing Practice
28 Act], it is unprofessional conduct for a person licensed under
this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe,
or except as directed by a licensed physician and surgeon,
dentist, or podiatrist administer to himself or herself, or furnish
or administer to another, any controlled substance as defined in
Division 10 (commencing with Section 11000) of the Health
and Safety Code or any dangerous drug or dangerous device as
defined in Section 4022."

29 7. Code section 4022 provides:

30 "“Dangerous drug’ or ‘dangerous device’ means any drug
31 or device unsafe for self-use in humans or animals, and includes
32 the following:

33 (a) Any drug that bears the legend: ‘Caution: federal law
34 prohibits dispensing without prescription,’ ‘Rx only,’ or words
35 of similar import.

1 (b) Any device that bears the statement: 'Caution:
2 federal law restricts this device to sale by or on the order of a
3 _____,' 'Rx only,' or words of similar import, the blank
to be filled in with the designation of the practitioner licensed
to use or order use of the device.

4 (c) Any other drug or device that by federal or state
5 law can be lawfully dispensed only on prescription or furnished
pursuant to Section 4006."

6 8. Code section 4060 provides:

7 "No person shall possess any controlled substance, except
8 that furnished to a person upon the prescription of a physician,
dentist, podiatrist, optometrist, veterinarian, or naturopathic
9 doctor pursuant to Section 3640.7, or furnished pursuant to a
drug order issued by a certified nurse-midwife pursuant to
10 Section 2746.51, a nurse practitioner pursuant to Section 2836.1,
a physician assistant pursuant to Section 3502.1, a naturopathic
11 doctor pursuant to Section 3640.5, or a pharmacist pursuant
to either subparagraph (D) of paragraph (4) of, or clause (iv)
12 of subparagraph (A) of paragraph (5) of, subdivision (a) of
Section 4052. This section shall not apply to the possession
of any controlled substance by a manufacturer, wholesaler,
13 pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
veterinarian, naturopathic doctor, certified nurse- midwife, nurse
14 practitioner, or physician assistant, when in stock in containers
correctly labeled with the name and address of the supplier
15 or producer."

16 9. Health and Safety Code section 11173 provides, in pertinent part:

17 "(a) No person shall obtain or attempt to obtain controlled
18 substances, or procure or attempt to procure the administration of
or prescription for controlled substances, (1) by fraud, deceit,
19 misrepresentation, or subterfuge; or (2) by the concealment
of a material fact."

20 10. Code section 125.3 provides that the Board may request the administrative
21 law judge to direct a licensee found to have committed a violation or violations of the licensing
22 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of
23 the case.

24 DRUGS

25 11. "Allegra" (fexofenadine) is a dangerous drug within the meaning of
26 Code section 4022.

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12. "Alprazolam" (Brand names: Ativan, Klonopin, and Xanax) is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d)(1), and a dangerous drug within the meaning of Code section 4022.

13. "Butalbital" (Brand name: Fioricet) is a dangerous drug within the meaning of Code section 4022.

14. "Cephalexin" (Brand name: Keflex) is a dangerous drug within the meaning of Code section 4022.

15. "Erythromycin" (Brand name: Akne-Mycin) is a dangerous drug within the meaning of Code section 4022.

16. "Loestrin" is a dangerous drug with the meaning of Code section 4022.

Background

17. Respondent was employed as a registered nurse at Kaiser Permanente Medical Center (Kaiser), located in Walnut Creek, California, from February 2, 1976, until her resignation on March 12, 2004. Until their divorce in 2000, Respondent was married to Dr. Robert Kittle, who was a physician employed at Kaiser until his retirement during July 2003.

18. Following a report that Respondent had attempted to obtain Fioricet by a fraudulent prescription, Kaiser initiated a review of prescription medication orders associated with Respondent and her children. Kaiser's review revealed that from on or about May 11, 2000, until on or about February 6, 2004, Respondent initiated multiple fraudulent telephone prescription orders for Allegra, Alprazolam, Butalbital, Cephalexin, Erythromycin, and Loestrin to Kaiser's pharmacy call-in center under the names of Dr. Robert Kittle and Dr. Thomas Rolle to obtain those substances for herself and for her children.

CAUSE FOR DISCIPLINE

(Wrongfully Obtaining, Possessing, and Self-Administering
Controlled Substances and/or Dangerous Drugs)

19. Respondent's license is subject to discipline for unprofessional conduct under Code section 2762, subdivision (a), in that from on or about May 11, 2000, until on or

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1 about February 6, 2004, while employed at Kaiser Permanente Medical Center, Respondent
2 committed the following acts:

3 a. Wrongfully Obtaining Controlled Substances and/or Dangerous Drugs.

4 Respondent wrongfully obtained Allegra, Alprazolam, Butalbital, Cephalexin, Erythromycin, and
5 Loestrin by fraud, deceit, misrepresentation, subterfuge, or the concealment of material facts by
6 calling in false prescriptions for those substances, in violation of Health and Safety Code section
7 11173, subdivision (a).

8 b. Wrongfully Possessing Controlled Substances and/or Dangerous Drugs.

9 Respondent wrongfully possessed Allegra, Alprazolam, Butalbital, Cephalexin, Erythromycin
10 and Loestrin without a valid prescription therefor, in violation of Code section 4060.

11 c. Wrongfully Self-administering a Dangerous Drug. Respondent

12 wrongfully self-administered Butalbital (Fioricet), Cephalexin (Keflex), and erythromycin without
13 the direction of a licensed physician and surgeon, dentist, or podiatrist.

14 d. Wrongfully Prescribe Controlled Substances and/or Dangerous Drugs.

15 Respondent wrongfully prescribed Allegra, Alprazolam, Butalbital, Cephalexin, Erythromycin
16 and Loestrin for herself and/or her children.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing the Board issue a decision:

1. Revoking or suspending Registered Nurse License Number 238382, issued to Debra Ann Kittle;
2. Ordering Debra Ann Kittle to pay the reasonable costs incurred by the Board in the investigation and enforcement of this case pursuant to Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 9/8/08



RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant